

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

THREE FIFTY MARKETS LTD.,	*	Civil Action No. 4:23-cv-02392
	*	
<i>Plaintiff,</i>	*	Admiralty - FRCP 9(h)
	*	
v.	*	
	*	
M/V ELEEN EVA (IMO No. 9527415), <i>in</i>	*	
<i>rem,</i>	*	
	*	
<i>Defendant.</i>	*	

EX PARTE MOTION FOR ORDER APPOINTING SUBSTITUTE CUSTODIAN

COMES NOW Plaintiff Three Fifty Markets Ltd. and moves *ex parte* for an Order directing the United States Marshal for this District to transfer custody of the M/V *Eleen Eva*, IMO 9527415 (the “Vessel”) to the Substitute Custodian, Wilbert’s Protection Security Services (“Wilbert’s”), by and through its authorized representatives. The Vessel will be under arrest and seizure in the Southern District of Texas, presently at Galveston, Texas Fairway Anchorage, but is allowed to shift to another berth within the Port of Houston to carry out normal operations, including cargo handling.

As grounds for this Motion, Plaintiff states as follows:

1. As set forth in its Verified Original Complaint (D.E. 1), Plaintiff has sought the arrest of the M/V *Eleen Eva* pursuant to Rule C of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure.

2. Plaintiff moved for an Order authorizing the Clerk of the Court to issue a Warrant to Seize a Vessel, *to wit* the M/V *Eleen Eva*. The Warrant to Seize a Vessel will be served and the Vessel will be taken into possession by the U.S. Marshal.
3. As stated above, the Vessel is presently within the Southern District of Texas, *to wit* Galveston, Texas Fairway Anchorage. In order for the Vessel to remain in the hands of a competent person, Plaintiff wishes to have Wilbert's, an experienced substitute custodian, who has agreed to go with the Vessel to the anchorage if necessary but always within this Court's jurisdiction.
4. Wilbert's has agreed to act as substitute custodian of the Vessel in lieu of the U.S. Marshal, and to serve as substitute custodian in *custodia legis* or until further notice of the Court.
5. As part of this Motion and proposed Order, Plaintiff agrees to release the United States Marshals Service from any and all liability and responsibility arising out of the care and custody of the Vessel, from the time the United States Marshals Service transfers possession of the Vessel over to said substitute custodian.
6. Plaintiff further agrees to hold harmless and indemnify the United States Marshals Service from any and all claims whatsoever arising out of the Substitute Custodian Wilbert's possession and keeping of said Vessel.

WHEREFORE, in accordance with these representations, Plaintiff Three Fifty Markets Ltd. requests the Court enter an Order appointing Wilbert's Protection Security Services as the substitute custodian for the M/V *Eleen Eva*.

[Signature Follows]

Dated July 3, 2023

Respectfully submitted,

/s/ David S. Toy

David S. Toy

SBN 24048029 / SDTX ID 588699

DAVID TOY LAW FIRM

4309 Yoakum Boulevard, Suite 2050

Houston, TX 77006

Telephone: (713) 322-7911

Email: david.toy@davidtoylaw.com

and

Patrick F. Lennon, Esq. (*pro hac vice to be filed*)

Kevin J. Lennon, Esq. (*pro hac vice to be filed*)

LENNON, MURPHY & PHILLIPS, LLC

The GrayBar Building

420 Lexington Avenue, Suite 300

New York, New York 10170

Telephone: (212) 490-6050

Facsimile: (212) 490-6070

Email: pfl@lmpaw.net

Email: kjl@lmpaw.net

***Attorneys for Plaintiff,
Three Fifty Markets Ltd.***